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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF:)	
J.L. and V.L.,)	
)	
KAREN LUCIO and FRANCISCO LUCIO,)	
)	
Appellants-Respondents,)	
)	
vs.)	No. 45A03-0607-JV-291
)	
LAKE COUNTY OFFICE OF FAMILY)	
AND CHILDREN,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Senior Judge
Cause No. 45D06-0410-JT-127
Cause No. 45D06-0410-JT-128

February 14, 2007
MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Karen and Francisco Lucio appeal the trial court's order terminating their parent-child relationship with J.L. and V.L. On appeal, Karen and Francisco raise the single issue of whether clear and convincing evidence supports the trial court's decision. Concluding that the trial court's decision is supported by clear and convincing evidence, we affirm.

Facts and Procedural History

In April, Juanita Martinez, then a minor but now an adult, left the home of Karen and Francisco. When authorities picked up Martinez, she stated that Francisco was abusive to her and the other Lucio children. The Lake County Office of Family and Children (the "DCS")¹ conducted an investigation and determined that the Lucio home was unclean and not suitable for children. On April 25, 2002, a detention hearing was held, and J.L., V.L., and three of their siblings were made temporary wards of the DCS. The DCS filed petitions alleging that J.L., V.L., and their siblings were Children in Need of Protective Services ("CHINS"). On October 23, 2002, a hearing was held at which the trial court determined that the children were CHINS.

The DCS's original case plan called for reunification of the children with their parents. This case plan called for Francisco and Karen to undergo psychological evaluations,

¹ This organization was later renamed the Lake County Department of Child Services. For consistency, we refer to the organization as the DCS throughout this opinion.

home-based counseling services to assist with housekeeping standards, drug and alcohol testing, and depression treatment for Karen. This plan eventually changed, and on October 19, 2004, the DCS filed its petition to terminate the parent-child relationships between Karen and Francisco and J.L. and V.L. Termination hearings were held on October 25, 2005, February 23, 2006, and February 28, 2006. The parties' briefs give significantly different characterizations of the testimony regarding the events that took place after the children's removal.² We will briefly summarize the testimony of the principle witnesses.

From July 2002 to October 2002, Irene Edwards was the DCS worker assigned to the Lucios' case. Edwards testified that Francisco and Karen were cooperative with the DCS and that Karen was consistent with her visitation of her children, but that Francisco did not make himself available for the random drug screens. From October 2002 until April 2003, Augusta Royster was assigned to the Lucios' case. Royster testified that Karen and Francisco generally complied with the services provided by the DCS, including drug screens.

² Karen's Statement of Facts contains significant argument, and almost completely ignores those facts that support the trial court's findings; instead, it recites only those facts that weigh against the trial court's findings. For example, she discusses the evidence indicating that J.L. and V.L. were not sexually abused, but completely ignores testimony indicating that J.L. and V.L. were sexually abused, such as a therapist's testimony that an older sibling described encounters in which older siblings sexually assaulted V.L. We remind counsel that "[t]he facts shall be stated in accordance with the standard of review appropriate to the judgment or order being appealed." Ind. App. Rule 46(A)(6). Further, Karen mischaracterizes witnesses' testimony at several points in her brief. For example, she says, "Ms. Love stated that J.L.'s foster parents are not in a position to adopt him." Karen's Brief at 6. Love actually stated that the parents are "not in a position to commit one way or the other." Tr. at 181 (emphasis added). She also states that J.L. and V.L. "have had ongoing physical exam [sic] by a pediatrician who have [sic] never indicated any sexual abuse to J.L. and V.L." Karen's Br. at 5. The testimony cited by Karen in support of this proposition actually indicates that the witness did not know if any physical exams were taken for the purpose of detecting sexual abuse. Tr. at 215-16. Also, Karen states, "Ms. Lindsey testified that J.L. had a problem with lying." Karen's Br. at 5. First, Lindsey's testimony related to V.L., not J.L. Second, while Karen's characterization is not inaccurate, it is misleading in that it is taken out of context and omits Lindsey's testimony given in the same line of questioning that "based on [J.L.'s] symptoms, I don't believe he lied [regarding the sexual abuse]." Tr. at 215.

Royster testified that the two bedroom “attic apartment” occupied by Karen and Francisco was not large enough for their six children. The case was then transferred to Kerry Williams, who was assigned to the case from August 2003³ until January 2004. At the time Williams took on the case, Karen and Francisco were living in an “attic apartment” with no separate bedrooms, but eventually moved into a two-bedroom apartment. Williams testified that Karen and Francisco “pretty much” complied with DCS services. One child, F.L., was returned on a trial basis, and at that time Williams testified that the only impediment to returning J.L., V.L., and the other children was that the two-bedroom apartment was not large enough to accommodate two adults and six children of both sexes.

Clyde Tucker took over the Lucios’ case in January 2004, and remained in charge of the case until August 2005. At one point, Karen, Francisco, and F.L. moved into a three-bedroom apartment, and A.L. was returned, also on a trial basis. However, F.L. was removed from the home for behavioral problems and lack of attendance at school. A.L. was also removed at this point.⁴ Tucker testified that he found Karen and Francisco “more resistant than anything” to DCS services, tr. at 97, and that supervision was a major issue that they had not resolved. However, Tucker also testified that Karen and Francisco were consistent with their visitation.

Tucker also testified that while he had the case, it came to his attention that V.L. had been the victim of sexual abuse at the hands of older siblings. Testimony was also given of

³ The record does not indicate who was assigned to the case between April 2003 and August 2003.

⁴ The record does not disclose the exact reason for A.L.’s removal.

reports by the children that Francisco engaged in sexual conduct with J.L.’s older sister⁵ in front of other children. Tucker stated that the last residence in which Karen and Francisco resided before he transferred the case was large and clean enough for the children to be returned, but that the utilities were not all turned on and that returning the children would not have been an option at that point because of psychological issues with the children, primarily relating to the newly discovered allegations of sexual abuse.

Patricia Love took over J.L. and V.L.’s cases in May 2005. She testified that both J.L. and V.L. told her about sexual and physical abuse that took place while they lived with their parents; the alleged sexual abuse was perpetrated by older siblings, and the alleged physical abuse was perpetrated by Francisco. Love testified that when she spoke to Karen and Francisco about the alleged abuse, they denied that either of the children was abused. Love further testified that, “the treatment team feels that it would be unduly traumatic for both children” were they to be returned to their parents. Tr. at 171.

Lindsey Anderson, V.L.’s therapist, also testified that V.L. recounted numerous incidents of sexual abuse perpetrated by his older siblings that occurred while V.L. lived in his parent’s home. She further testified that V.L. had repeatedly attempted to tell his mother about the abuse, but was not believed, and that when V.L. reported the abuse to Francisco, “he called [V.L.] a faggot and wouldn’t believe him.” Tr. at 206. She also testified that she had diagnosed V.L. with post traumatic stress disorder based on his sexual abuse, and that returning to live with his parents would be harmful.

⁵ Apparently, this was J.L.’s half-sister, and not Francisco’s daughter.

Lynn Kamiak, J.L.'s therapist, testified that J.L.'s older sibling admitted to her that he had sexually assaulted J.L. while living with their parents. Francisco and Karen both testified that they do not believe that J.L. or V.L. were sexually assaulted, and claim DCS workers are either lying or misinterpreting the boys' statements, or that the allegations were "implanted in [the boys'] head[s]." Id. at 340 (testimony of Karen).

Following the hearing, the trial court issued its order terminating Karen and Francisco's parental rights on March 17, 2006. The order contained the following findings relevant to this appeal:

There is a reasonable probability that the conditions resulting in the removal of the child[ren] from their parents' home will not be remedied in that: The Children were removed from the parent's care in April of 2002 and have not been returned to either parent's custody. The home was found to be in deplorable condition. The Children stated that their father was abusive to them. The Children were dirty and in need of medical attention. The Children did not have any clean clothing.

The family has had previous referrals due to neglect and a filthy house. The family previously lived in the State of Illinois and have [sic] a lengthy history with Illinois DCFS. Family problems consisted of physical abuse, domestic violence, truancy, medical neglect, environmental neglect, inadequate supervision, inadequate food, and inadequate shelter.

The parents are incapable of properly supervising the children. The children have been sexually molested by the siblings. Said molestation has severely traumatized [V.L.] and [J.L.]. While in therapy, [V.L.] alleged sexual molestation of himself and [J.L.] by two older siblings, [F.L.] and [Ju.L.]. The sex abuse was confirmed by [J.L.] and admitted to by [Ju.L.] at a later date during therapy, wherein [Ju.L.] told the therapist that he and [F.L.] held [J.L.] and [V.L.] down and raped them. This occurred on several occasions. There was also sexual contact between Francisco, [Ju.L.] and an older sister . . . All of this sexual activity was conducted while the children were in the care and custody of the parents. Parents deny any occurrence of such acts.

[V.L.] and [J.L.] do not want to return to their parents. It has taken over eighteen (18) months for [V.L.] to not segregate himself from other children and to not layer his clothing and not hide in a dresser drawer. The parents refused to believe the children or even discuss the situation. The parents are in

complete denial as to the allegations. The children are emotionally unstable due to the physical and sexual abuse which occurred in the home of the parents.

Parents have not lived in a single residence for over eight months at a time. Parents are continuously moving from place to place and do not provide stability for the children.

Parents refuse to believe or accept the emotional damage done to the children and blame others for the cause.

The children have severe emotional problems due to the physical, emotional, and sexual abuse which the parents cannot comprehend or accept.

There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child[ren] . . . for the reasons stated above.

It is in the best interest of the child[ren] and their health, welfare and future that the parent-child relationship between the child[ren] and their parents be forever fully and absolutely terminated.

Appellants's App. at 1-3.

Karen and Francisco now appeal.

Discussion and Decision⁶

I. Standard of Review

When reviewing a termination of parental rights, we neither reweigh evidence nor judge witness credibility; instead we consider only the evidence most favorable to the judgment and the reasonable inferences that can be drawn from the evidence. In re J.W., 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. When, as in this case, the trial court enters findings of fact along with its judgment sua sponte, the findings control only the issues

⁶ Karen and Francisco filed separate appellate briefs and were represented by separate attorneys at trial. However, the State's evidence applies equally to Karen and Francisco, and to the conditions in the home in which both Karen and Francisco live. Also, both Karen and Francisco challenge only the sufficiency of the evidence, raising many of the same issues. Therefore, although we address each party's specific arguments,

covered, and we use a general judgment standard for issues for which the court did not make findings. McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 198 (Ind. Ct. App. 2003). A finding will not be set aside unless we find it clearly erroneous. Id. We will affirm the general judgment on any legal theory the evidence supports. Id. A finding is clearly erroneous when no facts or inferences support it. In re J.W., 779 N.E.2d at 959. We will reverse a judgment as clearly erroneous if we review the record and have “a firm conviction that a mistake has been made.” Id.

II. Termination of Parental Rights

A parent has a constitutional right to raise his or her children, but this right is “not absolute and must be subordinated to the children’s interests when the children’s emotional and physical development is threatened.” A.F. v. Marion County Office of Family and Children, 762 N.E.2d 1244, 1249 (Ind. Ct. App. 2002), trans. denied. Although parental rights are afforded constitutional protections, these rights may be terminated when parents are unable or unwilling to meet their parental responsibilities. In re R.S., 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), trans. denied. We do not terminate these rights to punish a parent, but to protect a child. Id.

The elements that must be proved by clear and convincing evidence in order to terminate a parent-child relationship are set out in Indiana Code section 31-35-2-4(b)(2):⁷

we will do so under a single analysis of the statutory requirements for termination of parental rights.

⁷ Both Karen and Francisco cite In re Meidl, 425 N.E.2d 137, 141 (Ind. 1981), for the proposition that we may terminate a parent-child relationship only when custody with the children’s parents “is wholly inadequate for their very survival.” Frank’s Br. at 11; Karen’s Br. at 7. Our supreme court has held specifically that this language from In re Meidl is dicta, and that such a requirement is not part of the standard for determining whether a parent-child relationship should be terminated. Egley v. Blackford County Dept. of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;***
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interest of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

The Parties agree that section (A) of the statute is met in this case. Therefore, we will address only sections (B), (C), and (D).

A. Whether There Is a Reasonable Probability that the Continuation of the Relationship Poses a Threat to the Children's Well-Being⁸

The trial court found a reasonable probability that the continuation of the parent-child relationship poses a threat to the children's well-being. Karen argues that this finding is clearly erroneous because the trial court made it "despite evidence to the contrary," and points to the lack of evidence that Karen was ever accused of hurting the children, and to Martinez's testimony recanting her original accusations of abuse. Karen's Br. at 11. Her argument completely ignores the evidence supporting the trial court's finding. See In re W.B., 772 N.E.2d 522, 531 (Ind. Ct. App. 2002) ("[B]y asking us to consider the evidence favorable to them, the Parents improperly invite us to reweigh the evidence and judge the

⁸ Because subsection (B), is written in the disjunctive, we will affirm if clear and convincing evidence supports either condition. Castro v. State Office of Family and Children, 842 N.E.2d 367, 373 (Ind. Ct. App. 2006), trans. denied. Therefore, we do not discuss whether evidence supports the trial court's conclusion that a reasonable probability exists that the conditions that led to the children's removal will not be remedied because we conclude that clear and convincing evidence supports the trial court's conclusion that a reasonable probability exists that the continuation of the relationship poses a threat to the children's well-being.

credibility of the witnesses. This we may not do.”).

The trial court found that J.L. and V.L. were the victims of sexual abuse while living in their parents’ home and that Karen and Francisco deny that such abuse occurred. Evidence also indicates that Karen and Francisco were unresponsive and insensitive to the children’s reports of sexual abuse. Evidence also indicates that V.L. has been diagnosed with post traumatic stress disorder relating to these incidents, and therapists and counselors have testified that it would be harmful for V.L. or J.L. to return to Karen and Francisco’s care. We conclude that the trial court’s finding of a reasonable probability that continuation of the parent-child relationship would harm V.L. and J.L. is supported by the evidence and is not clearly erroneous.

Karen argues that the testimonial evidence supporting this finding was hearsay. However, no party objected to the testimony at trial. When evidence is admitted without objection, a party cannot then complain on appeal that the trial court should not have considered the evidence; the argument is waived. Scott v. State, 803 N.E.2d 1231, 1238 (Ind. Ct. App. 2004). “For purposes of sufficiency review, otherwise inadmissible hearsay evidence may be considered for substantive purposes and is sufficient to establish a material fact at issue when the hearsay evidence is admitted without a timely objection at trial.” Id. (citing Miles v. State, 777 N.E.2d 767, 771 (Ind. Ct. App. 2002)). Further, even if we were to not consider the alleged hearsay, the trial court could have found that the children had been sexually abused and traumatized based on Anderson’s testimony as to several of V.L.’s symptoms and behaviors that are consistent with sexual abuse. See In re W.B., 772 N.E.2d at

533-34 (testimony of case workers and therapists regarding children's behaviors convinced court that children were traumatized while living with parents).

Francisco points out that neither parent was accused of sexually abusing the children, and that "[i]t surely is an unfortunate situation if [the sexual abuse] did indeed occur, but in a large family where Father sometimes worked more than one job it may not be an indication of a lack of supervision by Father." Francisco's Br. at 18. We wholly disagree that sexual assault occurring in the home and perpetrated by older siblings does not indicate a lack of supervision, especially given that the children reported the abuse to Karen and Francisco, and were ignored. Further evidence of Karen and Francisco's inability to adequately supervise their children is that when F.L. was returned to their care on a trial basis, he was subsequently removed because he was not regularly attending school. Although one case worker testified that he personally had no concerns regarding Karen and Francisco's ability to supervise their children, ample evidence was introduced that raises concerns about Karen and Francisco's ability to adequately supervise their children. Because we do not reweigh the evidence, we need conclude only that clear and convincing evidence supports the trial court's finding that the Lucios are incapable of properly supervising their children.

Francisco also disputes several of the trial court's findings as being unsupported by the evidence. Specifically, Francisco disputes the trial court's findings: (1) that the children were in need of medical attention; (2) relating to the family's involvement with the Illinois child protective agency; (3) that Karen and Francisco provide no emotional or financial support for their children; (4) that the DCS's services offered to Karen and Francisco were

ineffective; and (5) that the Karen and Francisco failed to provide stability in housing.⁹ We conclude that these findings are not necessary to the judgment, and that therefore, even if these findings are clearly erroneous, any error is harmless. See Lasater v. Lasater, 809 N.E.2d 380, 398 (Ind. Ct. App. 2004) (“Findings, even if erroneous, do not warrant reversal if they amount to mere surplusage and add nothing to the trial court’s decision.”).

“[W]hen the evidence shows that the child’s emotional and physical development is threatened, termination of the parent-child relationship is appropriate.” In re Involuntary Termination of Parent Child Relationship of A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

In summation, the trial court had the following evidence before it. The children were the victims of sexual abuse while in their parents’ home. The children reported this abuse and were ignored. The children currently suffer psychological difficulties associated with this abuse; V.L. has been diagnosed with post traumatic stress disorder. The children are currently undergoing therapy, which is successfully rehabilitating the children. Karen and Francisco do not believe that their children were abused, and blame therapists for lying or brainwashing their children. Therapists and caseworkers believe that the children’s progress and psychological development will be harmed by a return to an environment where their

⁹ We note that Francisco makes some compelling arguments with regard to this finding. Although we do not decide whether the finding is clearly erroneous, we do note that the DCS was at one point satisfied with the housing situation, but did not return the children at that point because of the newly discovered indications of sexual abuse. Francisco also argues that courts should not base findings of inadequate or unstable housing on class or cultural judgments. Although we do not say that the trial court did so in this case, we are troubled that the DCS’s primary concern with the residences seems to be their size and number of bedrooms. Although we recognize the DCS’s concern that children, especially children of different sexes, have adequate privacy in their homes, we emphasize that being poor is not a reason to terminate parental rights. See Tipton v. Marion County Dept. of Public Welfare, 629 N.E.2d 1262, 1268 (Ind. Ct. App. 1994) (concluding that a finding was clearly erroneous because “the purely subjective nature of the finding [of inadequate housing] must reflect a class or cultural judgment that the lifestyle chosen by [Father] would be prejudicial to the best interests of the child”); Matter of A.M., 596 N.E.2d 236, 240 (Ind. Ct. App. 1992),

parents do not acknowledge what has happened. Neither child wants to return to his parents' care.

Although we recognize that some testimony may cast doubt on whether or not abuse occurred, we also recognize "that the trial court listened to the testimony of all the witnesses . . . observed their demeanor, and judged their credibility, as a reviewing court, we must give proper deference to the trial court." In re L.S., 717 N.E.2d 204, 211 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161 (2002). We conclude that this clear and convincing evidence supports the trial court's finding of a reasonable probability that the continuation of the parent-child relationship poses a threat to the children.

B. Best Interests of the Children

A determination of the best interests of the children should not be based merely on the factors identified by the DCS, but instead should be based on the totality of the circumstances. In re J.W., 779 N.E.2d at 962. In determining children's best interests, the trial court subordinates the parents' interests to the children's. McBride, 798 N.E.2d at 203.

Here, the evidence indicates that V.L. was progressing well in his treatment in his residential therapeutic program, and that J.L. was doing well in foster care. Also, several case workers and therapists testified that it would be in V.L. and J.L.'s best interests to not return home and to have their parent-child relationships terminated. See In re T.F., 743 N.E.2d 766, 776 (Ind. Ct. App. 2001), trans. denied (opinions of Guardian ad Litem and family case manager considered evidence supporting finding that termination of parental rights was in child's best interests). Testimony also indicated that neither J.L. nor V.L.

wishes to return home. See Stone v. Daviess County Div. of Children and Family Services, 656 N.E.2d 824, 832 (Ind. Ct. App. 1995), trans. denied (recognizing that child's preference is one of many factors to be considered when determining child's best interests). Most importantly, as discussed above, both Francisco and Karen expressed disbelief when told of V.L. and J.L.'s allegations, and instead accuse either their children or those charged with their care of fabricating the abuse. When children are attempting to deal with the psychological trauma that accompanies sexual abuse by a family member, it would hardly be in those children's best interests to place them in an environment where their caretakers would present obstacles to their psychological treatment.

We conclude that clear and convincing evidence supports the trial court's finding that termination of the parent-child relationships is in V.L. and J.L.'s best interests.

C. Satisfactory Plan for Care of Children

For a plan to be "satisfactory," for purposes of the statute, the plan "need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated." In re Termination of Parent-Child Relationship of D.D., 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), trans. denied. Attempting to find suitable parents to adopt the children constitutes a satisfactory plan. Matter of A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997). The fact that there is not a specific family in place to adopt the children does not make the plan unsatisfactory. In re B.D.J., 728 N.E.2d 195, 204 (Ind. Ct. App. 2000).

Here, J.L. is currently in foster care, and V.L. is in a therapeutic residential program. Anderson, V.L.'s therapist, testified that the plan for V.L. is to continue treatment in the

residential program and then identify “a therapeutic foster home in a pre-adoptive setting.” Tr. at 204. J.L. is currently living with a foster family that has expressed an interest in adopting J.L, but has not yet committed. Esther Walter, who monitors J.L.’s progress in foster placement, testified that if the current family is unable to adopt J.L, efforts will be made to find another home, and that J.L. is “a very adoptable child.” Id. at 221. Although neither of these plans specifically and definitely identifies the children’s future living situations, such specificity and definiteness is not required. It is enough that the plans provide a general sense of the children’s futures following termination of their relationship with their parents. We conclude that sufficient evidence supports the trial court’s finding that there is a satisfactory plan in place for J.L. and V.L.

Conclusion

We conclude that clear and convincing evidence supports the trial court’s findings of a reasonable probability that the continuation of the parent-child relationships will harm J.L. and V.L., that termination is in J.L. and V.L.’s best interests, and that there is a satisfactory plan in place for the care of J.L. and V.L. These findings support the trial court’s judgment terminating Francisco and Karen’s parental rights.

Affirmed.

BAKER, J., and DARDEN, J., concur.